



FILED IN THE OFFICE OF
A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 5/14/84
 Administrative Law Division

STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
 CHARLESTON 25305

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, E. Dandridge McDonald, Chairman,
 Title or Position

Public Service Commission of West Virginia, hereby submit to record in
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (X) proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- (X) other - specify (NOTICE OF ADOPTION OF FINAL RULE).

This filing pertains to

Chapter 24
 Article 1
 Series XI
 Section 1.3 3.4
 Page No. _____

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- (X) ~~Final~~ Final rules and regulations are excluded from Legislative Rule Making Committee;

obsolete rule
valid ? to Oct 27, 1985
Emergency rule filed

May 14, 1984
 Date Submitted

E. Dandridge McDonald
 Signature of Person Authorizing
 this Filing

PSC
Adm. Reg. 24-1
Series XI

AMENDMENTS TO RULES FOR
TRANSPORTING HAZARDOUS WASTE BY
RAIL, PURSUANT TO WEST VIRGINIA
CODE §20-5E-7.

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NOTICE OF ADOPTION OF FINAL RULE

By General Order No. 209.1 issued May 14, 1984, final rules and regulations were adopted and promulgated by the Public Service Commission of West Virginia as legislative rules, pursuant to the Commission's obligations under West Virginia Code §20-5E-7, §24-1-7 and §29A-1-3(b). These rules and regulations relate to the amendment of the Commission's rules governing the transportation of hazardous waste by rail, according to the West Virginia Hazardous Waste Management Act of 1981. These rules and regulations have also been promulgated in accordance with the applicable provisions of the West Virginia Administrative Procedures Act in effect at the time of the filing in the Secretary of State's Office for inclusion in the State Register and in accordance with West Virginia Code §24-1-7.

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ABSTRACT OF PROMULGATION HISTORY

The following is submitted as an abstract of the promulgation history of these duly adopted and promulgated final legislative rules; and, as such, comes in compliance with West Virginia Code §29A-2-6(b) and in complement to the procedural section of General Order 209.1, issued May 14, 1984, by which the Public Service Commission of West Virginia adopted and promulgated Rules 1.0-5.0, as amended, as final rules.

On September 9, 1982, the Commission issued an order which refiled and finally adopted rules for the transportation of hazardous waste by rail, pursuant to the provisions of the West Virginia Hazardous Waste Management Act, codified as West Virginia Code §20-5E-1 et seq. According to the provisions of the Act, the State of West Virginia, primarily through the Department of Natural Resources, is in the process of establishing a hazardous waste control program operated in conjunction with, and under the ultimate review of the United States Environmental Protection Agency (EPA). In accordance with the provisions of West Virginia Code §20-5E-7, particularly

subsection (b), the Commission has been conducting rulemaking proceedings to carry out its statutory duties in this regard.

In its review of the aforesaid PSC regulations promulgated September 9, 1982, the EPA noted two relatively minor changes¹ required in the PSC rules in order to make the PSC rules substantially equivalent to the Federal rules. The State rules must be substantially equivalent to the Federal rules in order for the State to receive authorization to regulate hazardous waste under the Federal program. Federal authorization is necessary in order for West Virginia to receive funding from the EPA to implement the State program.

The West Virginia hazardous waste management program faced a deadline of October 18, 1983 by which time the State program had to be substantially equivalent to the Federal rules. In order to implement the necessary and relatively minor changes to the PSC rules prior to October 18, 1983, it was necessary to promulgate the changes as emergency rules. It would obviously be impossible

¹ Rule 1.3 is being amended to provide that through-hauling transportations are subject to Sections 2 and 3 of the rules while in West Virginia. Also, a new Rule 3.4 is being added to require maintenance of records beyond 3 years in the event of an ongoing investigation or other proceeding.

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to undertake these changes in only a few days via the normal rulemaking process.

Thus, in order to implement the EPA-mandated changes prior to October 18, 1983, the Commission determined that it should file the amendments with the Office of the Secretary of State as emergency rules in accordance with West Virginia Code §29A-3-15. Furthermore, because emergency rules filed under this procedure expire after 180 days, the Commission also determined that it should simultaneously file with the Office of the Secretary of State the same rules as proposed rules, in accordance with West Virginia Code §29A-3-9. By submitting the amendments as proposed rules, providing opportunity for comment, and then finally adopting the amendments, the Commission could make the necessary amendments a permanent part of the hazardous waste rail transportation rules. As a result, the Commission on October 17, 1983 issued General Order 209.1, which promulgated the amendments both as Emergency Rules and as Proposed Rules.

Subsequent to the issuance of the Commission proposed rules and regulations, the Commission received no comments from any interested party. Thus, having received no comments, the Commission has determined that it is in the best interest of the public to promulgate the proposed amendments to Series XI of the Rules and Regulations of the Public Service Commission final rules

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pursuant to the applicable provisions of West Virginia Code §20-5E-7, §24-1-7 and §29A-3-8. The Commission is of the opinion that it possesses the legal authority to adopt and promulgate the rules hereinafter set forth as Series XI, Rules 1.0-5.0, as the final rules and regulations of the Commission regarding the transportation of hazardous waste by rail in the State of West Virginia.



STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
CHARLESTON, 25305

C E R T I F I C A T I O N

I, E. Dandridge McDonald, Chairman of the West Virginia Public Service Commission, do hereby certify that the rules and regulations contained herein are the lawfully proposed legislative rules of the West Virginia Public Service Commission.

E. Dandridge McDonald
Chairman.

May 14, 1984
Date

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TRANSPORTING HAZARDOUS WASTE BY
RAIL, PURSUANT TO WEST VIRGINIA
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FILED IN THE OFFICE OF
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SECRETARY OF STATE
THIS DATE 5-14-84
Administrative Law Division

RULES

STATEMENT OF AUTHORITY

These rules are legislative rules as defined in West Virginia Code §29A-1-2(d) and (i). These rules relate to the authority of the Public Service Commission of West Virginia, pursuant to West Virginia Code §§20-5E-7(b) and (c), 24-1-1(a), 24-2-1, 24-2-1a, 24-2-2, 24-2-7(a), 24-2-13 and 24-3-1. The Public Service Commission is authorized to issue rules and regulations as may be necessary to carry out the provisions of West Virginia Code §§20-5E-7(b) and (c) and Chapter 24 of the West Virginia Code, including code sections listed above, by West Virginia Code §§20-5E-7(b) and 24-1-7.

These regulations have been promulgated pursuant to the provisions of the Hazardous Waste Management Act (West Virginia Code §20-5E-1, et seq.). They represent a portion of the overall hazardous waste program developed in that Act, and to a certain extent rely on regulations promulgated by other state agencies in accordance with that Act. Accordingly, to the maximum extent possible, these regulations should be interpreted and enforced in a manner consistent with the overall hazardous waste program.

1.0 Scope

- 1.1. These regulations apply to all rail transporters who transport hazardous waste in shipments that originate, terminate or occur entirely within the State of West Virginia.
- 1.2. These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators of authorized hazardous waste management facilities.
- 1.3. Transportation of hazardous waste shipments originating and terminating outside of West Virginia shall comply with sections 2, 3, 4 and 5 of these rules while in West Virginia.
- 1.4. These rules are promulgated by the Public Service Commission of West Virginia and administered by the Railroad Safety Division of the Public Service Commission of West Virginia. Questions regarding these rules may be addressed to the Railroad Safety Division, Public Service Commission of West Virginia, State Capitol, Charleston, West Virginia 25305; Telephone: (304) 348-5200.

2.0 The Manifest System

- 2.1 (a) A rail transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with Section 5 of the "Manifest Regulations For Hazardous Waste Management" established in the rules of the Department of Natural Resources.
- (b) Before transporting the hazardous waste, the rail transporters must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
- 2.2. When accepting hazardous waste from a non-rail transporter, the rail transporter must:
- (a) Sign and date the manifest acknowledging acceptance of the hazardous waste.
- (b) Return a signed copy of the manifest to the non-rail transporter.
- (c) Forward at least three (3) copies of the manifest to:
- (i) The next non-rail transporter, if any; or
- (ii) The designated facility, if the shipment is to be delivered to that facility by rail; or
- (iii) The last rail transporter designated to handle the waste in the United States.
- (d) Retain one copy of the manifest and rail shipping papers in accordance with Section 3.0 below.
- 2.3. Rail transporters must ensure that a shipping paper containing all information required on the manifest (excluding the EPA identification number, generator certification and signatures) accompanies the hazardous waste at all times. Intermediate rail transporters are not required to sign either the manifest or the shipping papers.
- 2.4. When delivering hazardous waste to the designated facility, a rail transporter must:
- (a) Obtain the date of delivery and handwritten signatures of the owner or operator of the designated facility on the manifest, or the shipping paper if the manifest has not yet been received by the facility; and

Series 2.5. When delivering hazardous waste to a non-rail transporter a rail carrier must:

- (b) Retain a copy of the manifest or signed shipping paper in accordance with Section below.
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- (a) Obtain the date of delivery and the handwritten signature of the non-rail transporter on the manifest; and
 - (b) Retain a copy of the manifest in accordance with Section 3 below.
- 2.6. (a) The rail transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or another transporter to:
- (i) The designated facility listed on the manifest; or
 - (ii) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or
 - (iii) The next designated transporter; or
 - (iv) The place outside the United States designated by the generator.
- (b) If the hazardous waste cannot be delivered in accordance with paragraph (a) above, the rail transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.
- (c) (i) If the designated facility/alternate designated facilities/next designated transporter (whichever is applicable) finds, by comparison with the information on the manifest, a significant discrepancy in the type or quantity of hazardous waste being delivered, then the designated facility/alternate designated facility/next designated transporter (whichever is applicable):
- (A) may accept the hazardous waste; and
 - (B) shall contact all preceding handlers of the hazardous waste to determine the source of the discrepancy; and
 - (C) shall immediately report the discrepancy to the Railroad Safety Division of the Public Service Commission and the West Virginia Department of Natural Resources.

(ii) Each preceding handler of the hazardous waste shall file a written report within twenty (20) days with the Railroad Safety Division of the Public Service Commission and the West Virginia Department of Natural Resources explaining the discrepancy between the manifest and the related hazardous waste actually delivered.

(iii) Significant discrepancies in quantity are:

(1) for bulk waste, variations greater than ten percent in weight, and (2) for batch wastes, any variation in piece count, such as discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(d) (i) If an emergency situation requires a rail carrier to deliver a substance to a facility, and said substance is not accompanied by a manifest, and said substance has the properties of a hazardous waste, then the facility may accept the substance.

(ii) Both the rail transporter and the facility shall file a written report within twenty (20) days with both the Railroad Safety Division of the Public Service Commission and the West Virginia Department of Natural Resources fully explaining the nature of the emergency situation and disclosing the quantity and content of the delivered substance to the fullest extent possible.

2.7. Rail carriers who transport hazardous waste out of the United States must:

- (a) indicate on the manifest the date the hazardous waste left the United States; and
- (b) sign the manifest and retain one copy in accordance with Section 3.3 below; and
- (c) return a signed copy of the manifest to the generator.

3.0 Recordkeeping

- 3.1. For shipments by rail within the United States, the initial rail transporter of hazardous waste must keep a copy of the manifest and shipping paper containing all information required in Section 2.3 for a period of three years from the date the hazardous waste was accepted by the initial transporter.
- 3.2. For shipments by rail within the United States, the final rail transporter must keep a copy of the signed manifest, or the shipping paper if signed by the designated facility in lieu of the manifest, for a period of three years from the date the hazardous waste was accepted by the initial transporter.
- 3.3. A rail carrier who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.
- 3.4. The periods of record retention referred to above are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as required by the Commission.

4.0 Labeling

- 4.1. All rail cars transporting hazardous waste shall be so marked in accordance with the applicable provisions of the hazardous material regulations contained in 49 CFR 172 (as of October 2, 1981).
- 4.2. A rail transporter shall not accept packaged containers of hazardous waste for shipment unless all labeling and packaging requirements of these regulations have been met.

5.0 Discharges

- 5.1. In the event of a discharge of hazardous waste during transportation, the rail transporter must take appropriate immediate action to protect human health and the environment. (e.g. notify local authorities, dike the discharge area). Any discharges shall be primarily the responsibility of the rail carriers.
- 5.2. If a discharge of hazardous waste occurs during rail transportation, and an official (State or Federal Agency) acting within the scope of his official responsibilities determines that the immediate removal of the waste is necessary to protect human health or the environment, that official may authorize removal of the

waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

5.3. (a) A rail transporter must give notice of a discharge to:

- (i) The Railroad Safety Division of the Public Service Commission of West Virginia, State Capitol, Charleston, West Virginia 25305; Telephone (304) 348-5200.
- (ii) The West Virginia Department of Natural Resources, Division of Water Resources.
- (iii) The National Response Center, 800-424-8802 or 202-426-2675; but only if:
 - (A) A person is killed; or
 - (B) A person receives injuries requiring hospitalization; or
 - (C) Total property damage from the discharge exceeds \$50,000; or
 - (D) The discharge involves radioactive waste and/or materials; or
 - (E) The discharge involves shipment of etiologic agents; or
 - (F) The situation, in the judgment of the carrier, should be reported. (e.g., a continuing danger to life exists at the scene of the incident).

(b) The notice shall contain the following information:

- (i) Name of reporter.
- (ii) Name and address of transporter.
- (iii) Phone number where reporter can be reached.
- (iv) Date, time and location of discharge.
- (v) Extent of injuries, if any.
- (vi) Type and quantity of hazardous waste involved, if available.
- (vii) Description of incident and whether a continuing danger to life exists at the scene.

5.4. (a) Within 15 calendar days of the date of discovery of the discharge of any quantity of hazardous waste, the rail transporter shall file a written report, as specified in 49 CFR 171.16 (as of October 2, 1981), with the Railroad Safety Division of the Public Service Commission of West Virginia, the West Virginia Department of Natural Resources: Division of Water Resources, and the United States Department of Transportation.

Series XI (b) The report shall contain the following information:

- (i) All information required by Rule 5.3(b).
- (ii) The location of the discharge in relation to surface water, public water supplies, ground-water, wildlife inhabitants and agricultural production.
- (iii) The quantity and description of the hazardous waste removed and the disposition of that material;
- (iv) The disposition, quantity, and description of the unremoved hazardous waste;
- (v) A copy of the hazardous waste manifest shall be attached to the report.

5.5 A rail transporter shall clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

6.0 Revisions to Regulations

6.1. For the purpose of assuring that (a) these regulations are consistent with the regulations of the United States Environmental Protection Agency adopted pursuant to the federal Solid Waste Disposal Act, as amended, (b) the state hazardous waste management program is equivalent to and consistent with the federal hazardous waste management program adopted pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended, (c) changes in the regulations of the United States Environmental Protection Agency which have been adopted by reference in these regulations are properly placed into effect under state law, and (d) the requirements of the state Hazardous Waste Management Act are otherwise satisfied, the Commission shall revise these regulations in accordance with the procedures set forth in Section 6.2, as necessary.

6.2. Whenever there shall be an amendment of the federal Solid Waste Disposal Act, as amended, or the adoption or revision of rules and regulations required to be promulgated by the federal Solid Waste Disposal Act, as amended, or amendments to the rules and regulations of other State agencies promulgated pursuant to the provisions of the State Hazardous Waste Management Act, which amendments create a need for the revision of these regulations consistent with the discussion set forth in Section 6.1 of these regulations, the Commission shall within 30 days of the effective date

of such amendment initiate such action as may be necessary under the provisions of Chapter 24, Article 1, and Chapter 20, Article 5E of the West Virginia Code to amend these regulations at the earliest practicable date.

- 6.3. Persons desiring to call to the attention of the Commission amendments to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or amendments to the rules and regulations of other state agencies promulgated pursuant to the provisions of the State Hazardous Waste Management Act, may do so by filing a notice with the Commission identifying the amendment which has been made to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or rules and regulations of other state agencies pursuant to the State Hazardous Waste Management Act, and identifying the provisions of these regulations which such person believes should be amended.

7.0 Variances

- 7.1. The Commission may grant a variance from one or more of the specific provisions of these regulations upon written application from any person who is subject to these regulations.
- 7.2. An application for a variance must: (a) identify specific provisions of these regulations from which a variance is sought; and (b) demonstrate that suspension or modification of the identified provision will, on the basis of conditions unique and peculiar to the applicant's particular situation, have no significant adverse impact on public health or the environment.
- 7.3. The Commission may not grant any variance which would result in requirements which are any less strict than the applicable federal law or regulations.